

## STATE TAX COMMISSION

### AFFIDAVIT OF MAILING

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Trans World Airlines, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Trans World Airlines, Inc.  
c/o Bernard G. Cappiello  
605 Third Ave.  
New York, NY 10158

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
9th day of November, 1984.

David Parcheck

*Barbara A. Hays*  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

November 9, 1984

Trans World Airlines, Inc.  
c/o Bernard G. Cappiello  
605 Third Ave.  
New York, NY 10158

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
TRANS WORLD AIRLINES, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Tax under Article 9,	:	
Section 183 of the Tax Law for the Year 1978.	:	

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Petitioner, Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158, filed a petition for redetermination of a deficiency or for refund of corporation tax under Article 9, Section 183 of the Tax Law for the year 1978 (File No. 30851).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 6, 1983 at 9:15 A.M. Petitioner appeared by Bernard G. Cappiello, Assistant Controller. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioner was liable for the tax imposed by Tax Law section 183 for the year 1978, having merged into its second-tier subsidiary on January 1, 1979 at 12:01 A.M.

FINDINGS OF FACT

1. On or about March 16, 1979, petitioner, Trans World Airlines, Inc. (for purposes of this decision, referred to as "TWA 1"), filed a "tentative" Report of Franchise Tax on Capital Stock under Tax Law Article 9, section 183 for the calendar year ended December 31, 1978, estimating and remitting tax of \$90,000.00. On or about June 21, 1979, TWA 1 filed a final report for 1978,

reflecting a tax liability of zero and stating on the face of the return, "Corporation dissolved at close of its business on December 31, 1978. 1978 tax return not required to be filed. Payment of \$90,000.00 erroneously made along with tentative report filed on 3/14/79."

2. After conduct of a field audit, the Audit Division issued to TWA 1 a Notice of Deficiency, under date May 30, 1980, asserting additional corporation tax under section 183 for 1978 in the amount of \$31,682.00, plus interest thereon. (Such amount is in addition to the tax petitioner paid with its tentative report.)

3. Petitioner was a corporation organized under the laws of Delaware and engaged in the business of air transportation.

4. By the terms of a Plan of Reorganization and Agreement of Merger made August 16, 1978, by and among TWA 1, Trans World Corporation ("Holding Company"), a Delaware corporation and wholly-owned subsidiary of TWA 1, and New TWA Corporation ("New TWA"), a Delaware corporation and wholly-owned subsidiary of Holding Company, TWA 1 merged into New TWA on January 1, 1979 at 12:01 A.M. The separate existence and corporate organization of TWA 1 ceased on the effective date, and New TWA was thenceforth known by the name "Trans World Airlines, Inc." (for purposes of this decision, referred to as "TWA 2"). TWA 2 succeeded to all rights, assets, liabilities and obligations of TWA 1, in accordance with Delaware General Corporation Law.

5. The directors and officers of TWA 1 immediately prior to the effective date of the reorganization became the directors and officers of TWA 2, holding office for the terms provided in the bylaws of TWA 2.

6. Each share of common stock of TWA 1 outstanding immediately prior to the effective date of the reorganization was converted into and exchanged for

one share of common stock of Holding Company; each share of Series A cumulative convertible preferred of TWA 1 was exchanged for one share of Series A cumulative convertible preferred of Holding Company, and each share of Series B Cumulative preferred of TWA 1 for one share of Series B cumulative preferred of Holding Company.

7. TWA 2 assumed all the rights and obligations of TWA 1 arising under the various employee benefit plans, including the Employee Stock Purchase Plan, except that all references to TWA 1 and TWA 1 common stock were deemed to thenceforth refer to Holding Company and Holding Company common stock, respectively. On the effective date, TWA 2 assumed the pension plan, employment contracts, deferred compensation contracts and all other agreements and arrangements concerning employment to which TWA 1 was a party as of such date.

8. In March, 1979, TWA 2 filed a tax report, calculating and remitting the tax imposed under section 183 based on calendar year 1978.

9. Petitioner's position is that it was not liable for payment of any section 183 tax on March 15, 1979, said tax being payable in advance for 1979, inasmuch as it ceased its corporate existence on January 1, 1979 at 12:01 A.M. The Audit Division's position is that petitioner exercised one or more of the privileges listed in section 183 during 1979 so as to render it liable for the tax.

#### CONCLUSIONS OF LAW

A. That section 183 of the Tax Law requires every foreign corporation formed for or principally engaged in the conduct of an aviation business to pay, in advance, an annual tax computed on the basis of the amount of its capital stock in this state during the preceding year, "for the privilege of exercising its corporate franchise, or carrying on business or holding property

in a corporate or organized capacity in this state...". Tax Law section 183.6. The section 183 tax is a so-called "future" tax; by way of example, for the privilege of exercising its corporate franchise in this state in 1984, an aviation corporation must file a report and remit the tax on March 15, 1984, calculating the tax based on the amount of its capital stock in this state during 1983.

B. That having ceased its corporate existence at the close of taxable year 1978, petitioner did not exercise any of the privileges enumerated in section 183.6 during the year 1979. Petitioner had already paid its 1978 liability in advance (on or about March 15, 1978) and incurred no liability for 1979 which would have come due and payable on March 15, 1979.<sup>1</sup>

Petitioner derived no tax benefit from ceasing its existence at 12:01 A.M. January 1, 1979 rather than at 11:59 P.M. December 31, 1978. It was necessary for the parties to the reorganization to establish some time for the cessation of the existence of the merged corporation; the use of 12:01 A.M. on January 1, 1979 was merely a legal device to insure that the merger took place at the end of 1978.

Finally, there has been no allegation, and indeed there is no indication, that the reorganization was not a transaction of economic substance, effected for a bona fide business purpose. As a result of the merger and exchanges of stock, shareholders in TWA 1 became shareholders of Holding Company.

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<sup>1</sup> The question whether TWA 2 was liable for section 183 tax on March 15, 1979, based on TWA 1's capital stock in New York during 1978, is not before us.

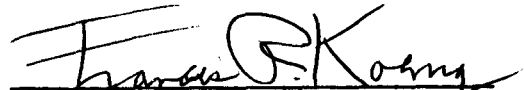
C. That the petition of Trans World Airlines, Inc. is hereby granted; the Notice of Deficiency issued May 30, 1980 is cancelled; and petitioner is entitled to refund of the \$90,000.00 paid with its tentative return.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER